



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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EPA Region 5 Records Ctr.



298514

October 15, 2004

Mr. Tom Hahne, CPG
Tetra Tech EM, Incorporated
200 East Randolph Drive
Suite 4700
Chicago, Illinois 60601

Refer to: 2010300074 – Winnebago County
Southeast Rockford Groundwater Contamination NPL Site
Superfund/Technical Reports

Dear Mr. Hahne:

This letter is in response to your proposal, dated May 18, 2004, on the behalf of the City of Rockford to conduct remedial actions under the Site Remediation Program (SRP) within the boundaries of the Southeast Rockford Groundwater Contamination (SEGRG) National Priorities List (NPL) Site (Site). I apologize for the length of time our response has taken, but your proposal has raised several technical and legal issues that have required significant research prior to our response, as well as our response getting caught up in the flurry of activity accompanying the end of the Federal Fiscal Year on September 30, 2004. I sincerely apologize for the delay.

The Tetra Tech EMI/City of Rockford proposal contained in the document sets forth a scenario that properties within the boundaries of the SERGC NPL Site, as defined by the Operable Unit (OU) 3 ROD that are not currently identified as source areas, be addressed by remedial programs other than the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA or Superfund), 42 U.S.C. §9601 *et seq.* The Illinois Environmental Protection Agency (Illinois EPA) is supportive of the concept of addressing contaminated properties within the boundaries of the Southeast Rockford Groundwater Contamination NPL Site that can demonstrate no contribution to the existing plume. However, after extensive review of your letter and the several proposals contained within, the approach proposed appears to be in conflict with the Record of Decision (ROD) for the Site and the Consent Decree for the Site entered into in January 1999 between Illinois EPA, the United States Environmental Protection Agency (U.S. EPA) and the City of Rockford. This proposed approach also appears to be inconsistent with Section 104 of CERCLA and Section 58.1(a)(2)(i) of the Illinois Environmental Protection Act (Act).

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Title XVII, and specifically Section 58.1, of the Act sets forth the provisions applicable to the Site Remediation Program. Section 58.1(a)(2)(i) specifically prohibits sites that are listed on the National Priorities List from entry into the Site Remediation Program. Therefore, any property included within the SERGC Site, being an NPL site, would not be eligible to elect to perform investigative or remedial activities pursuant to the provisions of the Site Remediation Program.

In the January 1999 Consent Decree, the United States of America and the State of Illinois covenanted not to sue or take administrative action against the City of Rockford pursuant to Sections 106 and 107(a) of CERCLA and Section 7003 of the Resource Conservation and Recovery Act of 1976, as amended (RCRA) and Section 22.2 of the Act for Groundwater Related Response Action and Costs, Past Response Costs, Future Oversight Costs and Agency for Toxic Substances and Disease Registry (ATSDR) costs at the Site, provided the obligations of the Consent Decree are met. The terms Groundwater Related Response Action and Costs, Past Response Costs, Future Oversight Costs and ATSDR Costs are defined in the January 1999 Consent Decree. The state and federal governments reserved rights against the City and the Covenant Beneficiaries with respect to liability for Soil, Sediment, and Surface Response Action and Costs and Reserved Source Containment Response Action. The Consent Decree, therefore, includes provisions whereby a release or threat of release of hazardous substances in soil, sediments, or surface media at the Site, excluding Area 7 of the Site, whether or not the release area is a source of contamination in the groundwater at the Site, could be addressed. Any remedial investigation or remedial action performed within the boundaries of the SERGC NPL Site would be performed in accordance with the requirements of CERCLA and the Oil Spill and Hazardous Substances National Contingency Plan (NCP). The requirement that all remedial work be consistent with the NCP is also included in Section 104 of CERCLA.

Eased on this analysis, all remedial investigations and remedial actions performed within the boundaries of the site must be performed so as to be consistent with the NCP and must be reviewed and approved by the Illinois EPA and reviewed by U.S. EPA as needed. The degree of clean up for the Site as identified in the ROD was established pursuant to guidelines set forth in Section 121(d) of CERCLA. Therefore, any remedial action proposed by the City of Rockford or its authorized agent must meet these requirements and would be subject to review and approval by Illinois EPA.

Illinois EPA is in the process of designing the remedial actions for the Site source areas and intends to implement each remedy as funding becomes available. Any remedial action proposed in the proximity of any known source area will require extremely close coordination with the Illinois EPA (and U.S. EPA in some cases) to assure that the work performed complies with the ROD and maintains NCP consistency.

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Illinois EPA cannot agree to your May 18, 2004 proposal as written. This proposal would require Illinois EPA to set aside the requirements listed in the OU 3 ROD that ensure that Remedial Actions carried out within the SERGC comply with the NCP and CERCLA.

However, Illinois EPA views this as an initial step in opening the necessary discussion and is willing to work with the City of Rockford to see that this project, if performed, is performed so as to be consistent with the requirements set forth in the OU 3 ROD for remedial actions contained within the boundaries of the SERGC NPL site. In addition, Illinois EPA has opened a dialogue regarding this matter with U.S. EPA and is willing to discuss various options to allow expedited remedial activities. However, for NCP consistency and ROD compliance, all remedial activities need to be completely coordinated with Illinois EPA and U.S. EPA, as it has been done with a PRP at a source area of the Site. An Administrative Order on Consent has been negotiated that allows a PRP at a source area of the Site to conduct an investigation and develop the Remedial Design for Remedial Action pursuant to the ROD, consistent with the NCP and CERCLA for contamination on its own property.

As a next step in this developing dialogue, I would like to propose a meeting between you, the City of Rockford, U.S. EPA, and Illinois EPA in an attempt to move this proposal forward. Please forward a series of dates at your earliest convenience so that the necessary arrangements can be made. For ease, I suggest that we meet at U.S. EPA Region 5 Headquarters in Chicago.

Additional technical comments on the proposal are attached and will require resolution as we move this process forward. If you should have any questions, need any assistance or wish to discuss this matter further, please contact me at 217-524-1655 or via electronic mail at: clarence.smith@epa.state.il.us or Thomas Williams of my staff at 815-223-1714 or via electronic mail at: thomas.williams@epa.state.il.us.

Respectfully,



Clarence L. Smith, Manager
Federal Site Remediation Section
Division of Remedial Management
Bureau of Land

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cc: (with all attachments)

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Statements made in the letter in the section entitled "Background and Introduction", include assumptions that are potentially premature and potentially incorrect such as that as made on page 2 of your May 18, 2004 letter which states:

"...In implementing the remedy and requiring only groundwater monitoring with no subsequent trigger for remedial action, the Illinois EPA has acknowledged that there is no complete risk pathway associated with the non-source portions of the Superfund Site..."

This is an inaccurate interpretation regarding how the Illinois EPA is regarding minor source areas located within the Southeast Rockford Groundwater Contamination (SERGC) National Priorities List (NPL) Site (Site). If Illinois EPA should obtain information through investigations of its own or information received from other investigations, it can develop a Remedial Action to deal with the new source by submitting an Explanation of Significant Differences (ESD) or ROD Amendment to U.S. EPA designed to deal with new sources of contamination.

The section titled "Statement of the Problem and Objective", on page 3 of your letter discusses the trigger for the response pursuant to Section 104(a) of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA or Superfund). The letter on page 3 in this section states:

"...In the Rockford Groundwater ROD, the protective response to the release has been determined to be groundwater monitoring and soil treatment in selected source areas; no additional remedial measures required..."

This statement is an inaccurate interpretation of the ROD and how CERCLA 104(a) regards the ROD. Descriptions in the ROD have both a soil remedy as well as a leachate remedy. The leachate remedies for source areas are designed to remediate already severely contaminated groundwater in source areas. By remediating the source areas through both a soil remedy and a leachate remedy, the remediation will eventually allow groundwater to meet Class I Groundwater Standards pursuant to 35 Illinois Administrative Code 620.410, the Applicable or Relevant and Appropriate Regulation (ARAR) for groundwater at the SERGC NPL Site.

A statement on page 4 also states that:

"...other potential sources of contamination that might be encountered during future construction activities within the highway corridor are unlikely to constitute a release or a trigger an additional CERCLA response unless the contamination can be directly associated with groundwater pathway to the plume..."

Furthermore, the letter on page 4 states that, "Sites where new contamination is discovered that do not meet the criteria for CERCLA release are most appropriately addressed as a Brownfield

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site under the SRP". Also on page 4, related to this statement that funds for Brownfield developments directed and assessing or managing contamination in shallow soils in non-source areas. Pursuant to Section 101(22) of CERCLA, the term "release" means:

"...Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing hazardous substances or pollutant or contaminant)..."

This definition is all-inclusive, regardless of the quantity released. This question is raised since releases over certain quantities require a mandatory report be generated to the Illinois Emergency Management Association (IEMA) and the Illinois Fire Marshals Office for flammable materials. This would include leaking underground storage tanks. Any material that is released under these guidelines would definitely meet the definition of a CERCLA release. Based upon this definition, all soil encountered that exceeds the Remediation Objectives in the ROD for the SERGC is subject to remedial activities. In Tables 1, 2, 3, 4, 5, and 6 of the SERGC ROD, remediation goals have been identified for soil and groundwater that are protective of human health and the environment.

To reuse materials encountered during the construction process, the City of Rockford first must demonstrate that the proposed material meets the requirements and will be used in a manner consistent with the requirements under the definition of "Clean Construction or Demolition Debris" as identified in Section 3.150 of the Illinois Environmental Protection Act (Act, 415 ILCS 5/3.160 (2002)). Secondly, potential clean construction or demolition debris must not meet the definition of a hazardous waste as defined in 35 Illinois Administrative Code 721.

Therefore, Illinois EPA will consider the reuse of materials in road construction:

1. That meet the definition of clean construction or demolition debris as defined by Section 3.1690 of the Act.
2. That are not hazardous wastes as defined by 35 Illinois Administrative Code 721.
3. That can be demonstrated that Construction worker and Public Safety can be maintained in using these materials. Illinois EPA is concerned that the generation of fugitive dust that may contain potential contaminants that could be inhaled or ingested through construction activity or nearby residential areas.

In any instance where materials are reused in road construction, proper institutional controls must be implemented that are protective of human health and the environment as well as that prevent future accidental excavation and possible exposure.

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Illinois EPA will not consider the reuse of materials in road construction that:

1. Include soil containing primary contaminants of concern as defined by the ROD in particular chlorinated VOCs and specific non-chlorinated VOCs. This includes soil that may contain levels of contamination that do not pose a threat of migration to the groundwater. The soil from source areas could also potentially contain contaminants not yet listed as contaminants of concern that Illinois EPA has discovered in pre-design activities at two source areas.
2. Contain materials generated directly from designated contaminated soil in Source Areas as defined by the ROD.

The Illinois EPA will review any request to use materials and will assist in the selection of potential contaminants that will need to be tested for to ensure no potential harmful exposure to workers or the public occurs.

The section titled "Establish an Acceptable Decision-Making Frame Work Document" on page 5 of your letter states:

"...First there are portions of the Superfund site that are clearly designated as 'Source Areas'. Where the Highway Corridor activities would be conducted in close proximity or within the boundaries of a Source Area, the actions conducted would in most cases be subject to Superfund. In some cases where the work was proposed within the boundaries or close to a source area, Rockford wishes to designate activities that are not subject to Superfund..."

The City of Rockford is planning to make improvements to the Illinois 251 corridor and Harrison Avenue, as shown in Figure 1 to the letter. The area shown on Figure 1 is contained within the SERGC. In addition, Source Area 11 directly contacts the north side of Harrison Avenue and 11th Street. Contamination exceeding levels of concern is suspected to exist below Harrison Avenue in this area, based upon the CERCLA Remedial Investigation performed by Illinois EPA. In addition, Source Area 9/10 directly contacts Harrison Avenue and may be included in the area subject to the improvement plans. Source Areas have been identified and defined in the ROD. Illinois EPA cannot approve any request that would redefine source areas identified in the ROD signed June 2002. Identified source areas containing hazardous waste have been characterized in the Remedial Investigation Reports that includes Source Area 11 and it has been determined that contact with these soils poses a risk to human and the environment. To remove these requested areas from the NPL site before they are remediated would be in direct contradiction of the ROD and Superfund guidance. Any activity performed in close proximity to or within the boundaries of a Source Area must be performed as to be consistent with the NCP and in accordance with the remedy selected in the ROD.

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The fourth paragraph on page 5 states, "Second, there are portions of the Superfund site that are not designated as Source Areas where Rockford is conducting due diligence activities which indicate there are no recognized environmental concerns". Should areas exist for which the City of Rockford can demonstrate to the satisfaction of Illinois EPA an absence of environmental concern, highway work may proceed. A report containing all relevant data demonstrating that no environmental concern is present should be submitted to the Illinois EPA Project Manager for review and approval. Written approval from Illinois EPA must be obtained prior to the commencement of any work.

On page 5, fifth paragraph, the issue is made that the City owns property that predates the Superfund action and should therefore be exempted from CERCLA. The fourth point included in this section identifies property that the city will be acquiring along stretches of Harrison Avenue that are not within the Source Areas. This section suggests the properties be handled under programs other than the CERCLA Program, such as the Underground Storage Tank Program and the Site Remediation Program. Illinois EPA cannot approve this request based upon the Consent Decree for the site, CERCLA, and the ROD signed in June 2002.

Illinois EPA through the extensive Remedial Investigation has determined that all of the area contained within the SERGC NPL Site is Class I groundwater pursuant to 35 Illinois Administrative Code 620.410. Recent Illinois EPA investigations and an independent investigation overseen by Illinois EPA verified the groundwater conditions in two source areas near Harrison Avenue redevelopment. Soil borings revealed that the groundwater system in the buried bedrock rock valley consists of highly permeable, fine to coarse sand with little or no fine sediment layers and that this aquifer is essentially a water table aquifer. These soil borings exist across Source Areas 4, 9/10 and 11. Particularly in Source Area 11, Illinois EPA found during the RI that at least 62 feet of highly permeable sand and gravel exist below surface grade (bgs) with groundwater encountered at 35 feet bgs. Illinois State Geological Survey records reveal that the sand and gravel deposits exist to approximately 235 feet bgs.

Additionally, the letter on page 6 states:

"...Identify COCs associated with the Groundwater Operable Unit and establish action for the COCs in soil, surface water, and or perched water that would result in a potential risk to the groundwater unit. These criteria would likely be based on Tiered Approach to Cleanup Objective (TACO) criteria for soil to groundwater pathway..."

This statement refers to Tiered Approach to Cleanup Objective (TACO). It is very important to note that TACO is not an Applicable or Relevant and Appropriate Requirement (ARAR) for CERCLA. Remediation objectives for COCs are set forth in the ROD for this site which are based on Superfund Risk Assessment Guidelines (RAGS). Groundwater below the SERGC is Class I pursuant to 35 Illinois Administrative Code 620.410, which is the controlling ARAR.

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Therefore, all soil remediation objectives must be consistent with achieving Class I Groundwater Objectives.

Framework Component Number 2 on page 6 of your letter. Framework Component Number 2 relates to the identification of types of development and remediations that would generally be allowable under this approach. It is important to note that Illinois EPA is the technical lead on SERGC in accordance with Sections 104(a) and 121(a) of CERCLA. Illinois EPA must be kept apprised of all remedial design and remedial action plans within the boundaries of the SERGC as shown in the ROD signed June 2002. In addition, copies of any Remedial Design Plans and Remedial Action Plans will require the approval of both U.S. EPA and Illinois EPA.

In Framework Component Number 3 regarding the identification of the physical limits of source areas and activities that generally would be suitable for this type of approach, there is an attempt to place a definition of "physical limits of source areas" and again raises the issue of "CERCLA notification requirements". Illinois EPA is unsure of the purpose of this component. Illinois EPA, through the remedial design process, is determining the exact horizontal and vertical extents of contamination in source areas for the implementation of the remedy as defined by the ROD. It has been determined through the RI that the four source areas definitely contain free product forms of both light non-aqueous phase liquids (LNAPL) and dense non-aqueous phase liquids (DNAPL).

In Framework Component Number 4 on page 6 of your letter regarding the identification of targeted sites, areas and activities, the initial screening of small businesses that may be not be potential large source areas is potentially acceptable. However, the immediate exclusion of petroleum products does not meet the requirements of the ROD. Since petroleum products such as xylene and waste oils are identified in the ROD as COCs, these materials need to be evaluated in accordance with the objectives stated in the ROD. Source Area 11 contained the former companies; Rockford Varnish, Rockford Coatings and Rockwell International Graphics that used chlorinated and non-chlorinated/petroleum product solvents such as xylene. These petroleum products are listed as COCs resulting from releases from aboveground storage tanks (ASTs), potentially USTs and dumping at Source Area 11. Overall, Illinois EPA has identified, benzene, toluene, ethylbenzene, xylene (BTEX), carbon tetrachloride, and waste oils as COCs in source areas from past and current investigations.

Potentially undiscovered minor sources not yet identified in areas located to the west of Source Area 11 are of concern to Illinois EPA and would need to be dealt with pursuant to the SERGC ROD, if necessary. Should the City of Rockford find petroleum contamination through its investigation, Illinois EPA will assist the city in determining if this is a new source area or a smaller more localized source. Larger source areas, should they be discovered, that have or may in the future contaminate the groundwater may require Illinois EPA to design other source control measure through a ROD amendment or an Explanation of Significant Differences (ESD).

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Smaller, more localized, point sources or contamination may be dealt with in an approved procedure (probably through the CERCLA removal action authorities) that conform to the ROD and that will not necessarily delay the Harrison Avenue Development. The Illinois EPA has worked with other interests in the SERGC to develop investigative procedures that will conform to the ROD and still allow property redevelopment.

Framework Concept Number 5 presents listing these activities on a map with the intended site use such as roadway, rights-of-way, or open space. Creation of a map listing property use would be extremely useful for remediation purposes. However, depending upon the potential nature and extent of contamination and relationship to source areas, the development of institutional controls would be required for consistency with the ROD.

Framework Concept Number 6 states, "Identify how these activities are consistent with the ROD requirements and would not result in expenditure of funds for potential CERCLA activities." Areas that fall within defined and designated source areas contain hazardous substances and must be dealt with in a manner pursuant to CERCLA and consistent with the NCP. Should excavation for the new roadway encounter hazardous substances, proper safety precautions and compliance with all applicable regulations must be observed.

Framework Concept Number 7 states, "Procedures for managing issues related to other programs would be described". Framework Concept Number 8 proposes to, "...identify screening procedures", and also states "...These screening procedures would be based on existing ASTM and Illinois DOT protocol as modified to account for COCs associated with the groundwater plume...". Any additional Illinois DOT protocols and ASTM protocols will all need to first meet the ROD requirements and then can be adjusted as necessary to make both protocols applicable.

In the section on page 7 of your letter titled "Obtain Concurrence for Individual Sites or Activities", the first sentence states, "After the frame work document is completed and approved by Illinois EPA, the City of Rockford would screen properties to determine whether Illinois EPA concurrence would be required." In addition, Item Numbers 6 and 7 indicate that only a brief summary would be provided to the Illinois EPA's Superfund personnel for concurrence and entry of the site into the SRP. Section 58.1(a)(2)(i) of the Illinois Environmental Protection Act specifies that sites on the National Priorities List cannot enter into the SRP. The Record of Decision signed June 2002 requires that all work involving remedial investigation and remedial action require Illinois EPA concurrence. Illinois EPA will review all investigations, analytical results, and proposals of how property will be investigated, remediated, and whether other actions are necessary.

Item Number 4 in the section titled "Obtain Concurrence for Individual Sites or Activities" states, "Identify historical use and ownership to determine whether the site ownership may

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include PRP or possible use of COCs". PRP searches are conducted by Illinois EPA and U.S. EPA and the agencies have the regulatory responsibility to make the conclusions regarding who is or is not a PRP.

Item Number 5 in the section "Review available Phase I ESA or Phase II Environmental Site Assessment information to evaluate whether the site may have COCs at the level of concern" on page 8 of your letter, the Determination of COCs above levels of concern will be performed pursuant to Section 121(a) of CERCLA. The remediation objectives in the Operable Unit 3 ROD were established to make the necessary determinations as to whether further remedial activity is necessary. Illinois EPA personnel will also be directly involved in any decision-making process regarding whether any contaminant discovered is at a level of concern.

The section titled "Basis for the Approach" on page 8 of your letter erroneously asserts that Illinois EPA has not made any contingency for new sources that may require addressing groundwater contamination. Illinois EPA, through its own investigations, has addressed issues related to the ROD and should new information become available regarding new sources of contamination, a determination pursuant to CERCLA and the ROD will be made as to the appropriate action. However, should new source areas or situations develop requiring remediation, Illinois EPA is fully prepared to submit an Explanation of Significant Differences (ESD) or ROD Amendment pursuant to CERCLA, allowing implementation of remedial actions to address new source materials. A contingent remedy is already in place for Source Area 9/10 to address contamination away from the expected source, should upcoming investigations determine that it is necessary.